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SUBJECT: CONSTITUTIONAL REFORM IN MOROCCO: IS IT ON THE WAY?

REF: A. 05 RABAT 01406
[B.](#) RABAT 00024
[C.](#) RABAT 00398
[D.](#) RABAT 00399
[E.](#) RABAT 00522
[F.](#) RABAT 00539
[G.](#) RABAT 00676
[H.](#) RABAT 00722

Classified By: Political Officer Cherie J. Lenzen, reasons 1.4 (b) and (d)

[11.](#) (C) Summary: Constitutional reform is regularly brought up by contacts and is occasionally a topic in the press. Reform, however, does not mean the entire constitution but rather portions of it which directly relate to the interest or interests of a particular group. Whereas Moroccans describe their form of government as a "constitutional monarchy," it is in fact a "monarchy with a constitution." The King has ultimate power and authority, which is guaranteed in the constitution. Even though government functions are separated into three branches, the executive, legislative and judicial, the King makes decisions and has the power to dissolve the government. There are voices, however, calling for constitutional reform. Some of these voices are from nongovernmental organizations (NGOs) and others, such as the Amazigh (Berber), are from loose confederations of like-minded individuals. At the same time that these voices are being heard, there is the King's. He seems to be intentionally supporting issues, as for example the new "Nationality Code," on which there will likely be debates leading to constitutional changes as well as changes in the social fabric. The atmosphere that seems to be consciously being created by the King (palace) is one where all of the voices can be heard without altering the importance of the monarchy, its relationship to Islam and the historical, and constitutionally confirmed, relationship between the monarchy and Islam. End Summary.

Steps Toward Change?

[12.](#) (SBU) Over the last year, there have been occasional press reports concerning constitutional changes or amendments. These reports have ranged from in-depth discussions in TelQuel (April 2005), an independent weekly French-language publication, to infrequent hints in the official press, MAP. On January 5, a MAP report suggested that constitutional "adjustments" might be necessary if the

democratic changes achieved to date are to be "consolidated."

In addition, the King's acceptance of the Equity and Reconciliation (IER) final report, including its recommendations, some of which pertain to the independence and transparency of the judiciary, indicate that change is being considered (reftel B).

¶13. (SBU) The Moroccan Association of Human Rights (AMDH) is the most outspoken of the Moroccan NGOs; it continuously demands in press releases that the Ministry of Justice (MOJ) be investigated for cases of alleged torture by the various branches of police and for prison conditions. While these statements refer primarily to abuses in the implementation of law, they are also directed at upholding what is in the constitution, e.g., Chapter One, Articles 1 through 18.

¶14. (C) Calls for freedom of the press and expression, which again is guaranteed in the constitution, emanate primarily from two sources. First, NGOs, such as AMDH and the newly formed and MEPI-funded Adala, the only Moroccan NGO focusing on judicial reform, argue that excessive fines have been levied against *Le Journal*, an independent French-language weekly, and *TelQuel*, and that the Press Code needs to be changed, as the definition of libel is loosely interpreted (reftel C). (Comment: The fines levied against the two French-language weeklies are exorbitant and may cause *Le Journal* to close. Fines against Arabic newspapers are generally less. Some journalists argue that the definition of libel is defined to support the monarchy and those individuals close to the monarchy, that is, that there is no real definition. Note that without a well-defined code, which is uniformly implemented, the judiciary, which is essentially under the executive branch (the King) cannot act independently. This point was recently made by Adala,

reftels C, E). Second, Nadia Yassine, whose father is the leader of the Justice and Charity Organization (JCO), has said that Morocco does not need the monarchy, rather it should be a republic (reftel A).

¶15. (C) Judicial reform is openly discussed by groups of "reformers" and in the press. The Ministry of Justice (MOJ) is taking judicial police abuses seriously, as evidenced by press reports of investigations into these abuses and the detention of those who allegedly committed them. The MOJ is also reviewing its procedures and updating the Penal Code. (Note: A meeting will take place the week of April 23 in Marrakesh to which members of the American Bar Association (ABA) have been invited, signaling the positive role this US nongovernmental organization (NGO) is playing. End Note.) At the same time, however, criticism of the judicial system is frequent. The NGO Adala is outspoken about corruption and the lack of transparency (reftel D). Its president, Abdelaziz Nouyadi, has said that there cannot be a transparent, democratic, and independent judicial system when the King presides over the judicial branch of government (*TelQuel*, April 2005). Chapter Seven, Articles 82 through 87, of the constitution set forth the understanding of the judiciary. In Article 82, it is to be "independent from the legislative and executive branches," but, Article 86 clarifies that the King presides over the Supreme Council of the Magistracy.

¶16. (C) All media outlets have reported the evolving nature of the Conseil Royal Consultatif pour les Affaires Sahariennes (Royal Consultative Council for Sahrawi Affairs, CORCAS, reftels F, H). While this consultative process is directed at resolving the Western Sahara issue, it raises the possibility of other regions gaining autonomy. The mood is akin to -- "if the Sahrawis can have autonomy, so can we" -- for the Amazigh (Berber) population (reftel G). At first glance, autonomy issues may not immediately be constitutional issues; yet, in reality they are. The constitution impresses upon Moroccans the understanding of one African nation which is ruled by the monarchy. The citizens speak Arabic as their official language and Islam is the state religion. Amazighs pushing for autonomy want recognition of their language as an official Moroccan language, and, a separate identity for the

Amazigh, not an Arab identity.

¶7. (C) Integral to the atmosphere of reform in the country is the newly proposed "Nationality Code," which will allow children of Moroccan women married to non-Moroccans to be citizens. This new law would only apply to children born in Morocco. If a child is declared a "bastard," the child can become a citizen under the present law. If passed by parliament, the rights contained in Articles 8 and 9 of the constitution will be extended to those who were previously thought of as "non-Moroccans." (Note: Articles 8 and 9 provide for gender equity, the right to vote, freedom of movement, opinion, and association. Article 9 does, however, state that law can limit these freedoms. End Note.) As Islam is the state religion and is patrilineal, not matrilineal, parliamentary debate on the code during this spring session will likely lead to religious discussions. The constitution does not allow for the understanding of Islam as the state religion to be altered, but to accept children through the matrilineal line is against Islam. With Islam and the state being linked, the Nationality Code questions the religion and by extension the state.

Constitutional History

¶8. (U) The first constitution was adopted in 1962; revisions occurred in 1970, 1972, 1980, 1992, and 1996. The 1992 constitutional changes created a "constitutional council" and parliamentary investigative committees, and the legal age for a citizen was reduced from 21 to 20.

¶9. (U) The "constitutional council" consists of twelve members. Six are appointed by the King for nine years; their tenure cannot be renewed. The six other members are appointed from the two houses of parliament, three from each house. One of these members is changed every three years. The chair of the council is chosen by the King from one of the six members he appoints. The council's primary role is to validate parliamentary elections and any referendums that

might occur. Before any procedural parliamentary laws go into effect they must be approved by the council. The King, the prime minister and the presidents of the two houses of parliament may refer any law to the council before it is put into effect. The council's decisions are final and binding on all involved parts of the government.

¶10. (C) The 1996 changes created the bicameral legislature; however, the power rests with the King, including oversight of the judiciary. While the principles of the constitution assert in Chapter One that Morocco is democratic and that sovereignty is with the people, it also asserts in Chapter Two the rights of the monarchy. Articles 19 through 35 of the constitution detail the supremacy of the King and the monarchy.

--The King is the defender of the faith; he guarantees Moroccan independence and "territorial integrity."

--The monarchy is hereditary from father to son (Note: If there are no sons, the "throne" is "invested in the closest male in the collateral consanguinity." End Note.).

--The King's person is considered "sacred and inviolable";

--The King appoints the prime minister; and, he appoints (and can dismiss) the cabinet; he presides over cabinet meetings.

--The King can "terminate" the government; dissolve parliament; and, address parliament without debate.

--The King issues Royal Decrees.

--The King is the commander-in-chief of the armed forces; and, he makes civil and military appointments.

--The King accredits ambassadors to other countries and international organization; he signs and ratifies treaties.

--The King presides over the Supreme Councils of the Magistracy, Education and National Reconstruction and Planning.

¶11. (U) Chapter Twelve of the constitution is "revising the constitution." This chapter states:

--The King, the HouQof Representatives (the lower house of parliament) and the House of Counselors (the upper house of parliament) shall have the right to initiate a revision of the Constitution. The King shall have the right to submit, directly for referendum, the revision project he may initiate. (Article 103)

--A proposal for revision submitted by one or more members of one of the two Houses shall be adopted only if voted on by a two-third majority of the members of the House concerned. The proposal shall be submitted to the other House which may adopt it by a two-third majority of its members. (Article 104)

--Revision projects and proposal shall be submitted to the nation for referendum by Royal Decree. A revision of the Constitution shall be definitive after approval by referendum. (Article 105)

--Neither the State system of monarchy nor the prescriptions related to the religion of Islam may be subject to a constitutional revision. (Article 106)

Comment

¶12. (C) The connection between the state and the religion, Islam, was made from the inception of the Alaouite dynasty, which has ruled the area of Morocco since 1666. The Alaouites are descendants of the prophet Mohammed and claim special status within Islam. The constitution recognizes the King as "the commander of the faithful." For Islam, the Koran is the most sacred document, and, the only one to which allegiance is owed. Since the King is the representative of the religion, the state and religion have been merged effectively. This understanding, however, may mean, at least for some Muslims, that the constitution is insignificant.

Further, changing the nationality code may call into question the special relationship between the Moroccan monarchy and religion: the monarchy is the representation of god on earth. Constitutional reform relating to the monarchy and to Islam is not possible, according to Article 106. A new nationality code will present religious as well as state-related conflicts for some members of the society.

¶13. (C) The human rights NGOs do not have an "umbrella" organization which might make a concerted, focused effort towards constitutional change possible. Civil society actors, although they work towards their own individual goals, do not appear to have a unified stance. In discussions, reformers will point out that constitutional reform is necessary, but only infrequently take a bold stance, as for example Nouyadi's, which advocates a separation of powers between the three branches of the government. In addition, the Amazigh, recognize that Arabic is the language of Islam. Their arguments are for constitutional recognition of the ethnic diversity of the country, not for the elimination of Arabic as that could lead to being interpreted as a negative stance about Islam.

¶14. (C) The IER's final report recommends judicial reforms (reftel A) which would enable the separation of powers between the executive (King) and judiciary. These recommendations were fully accepted by the King when the IER's final report was submitted. The Consultative Council on Human Rights (CCDH) has the mandate to implement the

recommendations. What is significant is that a former political prisoner, Driss Benzekri, headed the IER and is now the president of the CCDH. His personal history helps to validate the IER's final report as well as assuring the population that the CCDH will implement the suggested changes. Benzekri's appointments to both organizations can be viewed as strategic moves by the King and his advisors.

¶15. (C) The King, those who advise him, and those who wish to implement reforms are walking a fine line. On the one hand, reforms which may precipitate constitutional change are being advocated by the King; on the other hand, NGOs and others are advocating for the constitutional recognition of the diversity in the Moroccan population, or for increased powers of the prime minister. It would appear that a gradual process leading to constitutional change is underway, but that there is an attempt to make this process walk hand-in-hand with changing society's perceptions. Voices of dissent are allowed, if not encouraged, as long as the monarchy, religion and territorial integrity are not questioned or libeled. This will be an area worth keeping an eye on in the future.

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Riley